Petition

81-822

NO. _____

Office - Supreme Court, U.S.
FILED
OCT 30 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

ROBERT L. LEVISON

Petitioner

v.

LAURETTA ANN LEVISON

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Andrew H. Marshall
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Petitioner

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I.

QUESTION PRESENTED FOR REVIEW

Whether the award below constitutes an equitable division of military retirement pay.

II.

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OPINIONS BELOW

No opinions have been reported.

V.

JURISDICTIONAL GROUNDS

Review is sought of the final judgment of the Supreme Court of Georgia denying petitioner's application for discretionary appeal entered August 5, 1981 (Levison v. Levison, No. 1743)

Jurisdiction is believed to be conferred upon this Court by 28 U.S.C. §1257.

VI.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Art. VI, Clause 2. Supreme Law of Land.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

42 U.S.C. § 659.

(a) Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

42 U.S.C. § 662.

(c) The term "alimony", when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of such individual, and (subject to and in accordance with State Law) includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support; such term also includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in

accordance with applicable State law by a court of competent jurisdiction. Such term does not include any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

VII.

STATEMENT OF THE CASE

This case arises from a contempt proceeding brought to enforce a state court judgment providing for an equitable division of military retirement pay.

The underlying judgment was entered on December 15, 1980, in Levison v. Levison (Chatham County, Georgia, Superior Court Civil Action No. D-39667). The pertinent part of that judgment reads:

"2. That the plaintiff make the following payments in cash or properly certified funds to defendant:

(a) $7,500.00 on/or before March 10, 1981;
(b) $7,500.00 on/or before June 10, 1981.

3. That Robert L. Levison, Jr. is ordered to pay to Lauretta Levison the sum of $700.00 per month, payable in two equal installments (initially $350.00 each) on the first and the fifteenth day of each month beginning December 15, 1980. The said sum of $700.00 per month is to increase in an amount equal to one-half of the amount of each and every increase in monthly government benefits given to Robert L. Levison, Jr., from the date of this

order. Said amount is to terminate on the death or remarriage of Lauretta Levison."

This judgment was premised upon a jury verdict which read:

"We the members of the jury find for LAURETTA ANN LEVISON to receive alimony.

A lump sum of $15,000.00 to be payable one-half of which will be due and payable ninety (90) days from this date and the balance One Hundred Eighty (180) days from this date.

We also award $700.00 a month adjustable in accordance with any increases in government retirement benefits (current CPI) payable semi-monthly until she remarries."

During deliberations the jury had inquired of the trial judge as to the wife's entitlement to a portion of petitioner's military pension (Trial Transcript designated "Vol. I"). Specifically, the foreman asked whether the wife would be "entitled to a pension from her former husband from the government, ..." ((Vol. I, p. 365). Then, after a general charge on alimony, the foreman persisted, "Well, Your Honor, what the jury was curious about was if they vote the contention [sic] of the jury of twelve is to award alimony, if government payments were to cease or continue after the person who would be paying, be responsible for the paying, dies, should it continue as long as she

lives and she survives." (Vol. I, p. 370). This question was not answered. Thereafter, the jury returned its verdict which stated, inter alia, "We also award seven hundred dollars a month, adjustable in accordance with any increase in government retirement benefits ..." (Vol. I, p. 371). Counsel for the wife then inquired as to the percentage of any increase which the jury intended to go to the wife. (Vol. I, p. 372). In response, the foreman stated, "The percentage of the seven hundred dollars versus the fourteen hundred dollars or fifty per cent. We assumed that it was fourteen hundred dollars." (Vol. I, p. 371). That statement obviously referred to petitioner's testimony establishing his military retirement pay at approximately fourteen hundred dollars per month. (Vol. I, pp. 90-94).

A direct appeal to the Georgia Supreme Court was dismissed on June 2, 1981.

On July 1, 1981, petitioner was served with a motion for contempt. (Levison v. Levison, Chatham County, Georgia, Superior Court Civil Action No. D-45485). Pursuant to a rule nisi, petitioner appeared to answer this motion on July 9, 1981. (Hearing Transcript designated as "Vol. II"). At that time, counsel for petitioner urged the court to decline to hold petitioner in contempt because the underlying judgment was void under

the Supremacy Clause and federal statute by reference to the rationale of this Court's recent decision in McCarty v. McCarty, 49 U.S.L.W. 4850 (No. 80-5, June 26, 1981). (Vol. II, pp. 30-33, 76-85). The court held petitioner in contempt.

An application to appeal, filed July 15, 1981, sought review of this contempt order for, inter alia, error in enforcing an equitable division of military retirement pay. The application was denied by the Supreme Court of Georgia on August 5, 1981. (Levison v. Levison, No. 1734). That action constituted the final judgment of the highest court of the State of Georgia.

VIII.

REASONS FOR ALLOWING THE WRIT

It is respectfully urged that the decision below is in conflict with the recent decision of this Court in McCarty v. McCarty, 49 U.S.L.W. 4850 (June 26, 1981). There, a California judgment treating military retirement pay as quasi community property subject to equitable division was reversed as inconsistent with the military retirement scheme. Justice Blackmun, speaking for the majority, held that the language of 10 U.S.C. §3929 specifically designates military retirement pay as a "personal entitlement" not subject to equitable division. After a comprehensive review of the legislative history of the retirement scheme, the Court concluded tha military retirement pay cannot be diverted from the recipient by state courts except for "alimony" (or child support) as defined by the Social Security Act, 42 U.S.C. §659.

"Alimony" is defined for purposes of 42 U.S.C. §659 to exclude "... any transfer of property ... in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses." 42 U.S.C. §662(c). Thus, it is clear that McCarty prohibits the

equitable division of military retirement pay regardless of the label attached by state law to such division.

As a substantive matter, the award which is sought to be enforced here constitutes an equitable division of property under the law of Georgia. The concept of "equitable division" of real and personal property is recognized in Georgia. See Stokes v. Stokes, 246 Ga. 765 (1980), where the Georgia Supreme Court explicitly recognized the authority of Georgia courts to order equitable division of such property. After an exhaustive review of the applicable legislation and judicial history of the concept, the court held:

> "In the book entitled "Divorce, Alimony and Child Custody" (1975) by Messrs. McConaughey and Hinchey, the authors state that 'In a divorce action the court has ancillary jurisdiction to determine the equitable interest of either spouse in the real or personal property owned, either in whole or in part, by the other spouse.' (§12-2, p. 179). We find that statement to be correct in view of Code §30-118 and the foregoing cases. In those cases this court has approved the award to a spouse, either husband or wife, of property, both real and personal, held in the name of the other spouse, not as alimony but as

equitable division of property."

In this case the verdict does not characterize the components of the award. After reciting that the wife was entitled to alimony the jury awarded a lump sum of $15,000.00. Then the verdict adds, "We also award $700.00 a month, adjustable in accordance with any increases in government retirement benefits (currently CPI) payable semi-monthly until she remarries."

Clearly, as a substantive matter, in light of the colloquy among the jury foreman, trial judge, and wife's counsel, this award would be construed under Georgia law as an equitable division of petitioner's retirement pay. Accordingly, that portion of the award is unenforceable under McCarty.

For the foregoing reasons, it is respectfully urged that the writ issue and that the judgment below be reversed.

Andrew H. Marshall

J. Hue Henry

APPENDIX

Application No. 1734

SUPREME COURT OF GEORGIA

Atlanta, August 5, 1981

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

ROBERT L. LEVISON v.
LAURETTA ANN LEVISON

Upon consideration of the application for discretionary appeal filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Joline B. Williams, Clerk

STATE OF GEORGIA ¶ COUNTY OF CHATHAM ¶	IN THE SUPERIOR COURT OF SAID COUNTY	
ROBERT L. LEVISON, JR., ¶ Plaintiff, ¶ -v- ¶ LAURETTA ANN LEVISON, ¶ Defendant ¶		Civil Action No. D-39667

JUDGMENT

This case came on for trial before the Court and a jury, the Honorable Eugene Gadsden presiding, and the issues having been duly tried and the jury having duly rendered its verdict on the 10th day of December, 1980 as follows:

"We the members of the jury find for LAURETTA ANN LEVISON to receive alimony.

A lum sum of $15,000.00 to be payable one-half of which will be due and payable ninety (90) days from this date and the balance One Hundred Eighty (180) days from this date.

We also award $700.00 a month, adjustable in accordance with any increases in government retirement benefits (currently (CPI) payable semi-monthly until she remarries.

We also award title to the automobile and household furniture and furnishings now in her possession.

JULIAN B. HARRIS,
Foreman
10 December 1980

It is Now Therefore, ORDERED, ADJUDGED AND DECREED that in order to carry out the aforesaid verdict:

1. Within one (1) week from the date of this order plaintiff shall deliver to defendant the automobile title to the 1978 Dodge Pacer Station Wagon used by Lauretta Levison, that title being signed by plaintiff in the applicable space for seller's signature and properly notarized.

2. That the plaintiff make the following payments in cash or properly certified funds to defendant:

(a) $7,500.00 on/or before March 10, 1981;
(b) $7,500.00 on/or before June 10, 1981.

3. That Robert L. Levison, Jr., is ordered to pay to Lauretta Levison the sum of $700.00 per month, payable in two equal installments (initially $350.00 each) on the first and the fifteenth day of each month beginning December 15, 1980. The said sum of $700.00 per month is to increase in an amount equal to one-half of the amount of each and every increase in monthly government benefits given to Robert L. Levison, Jr. from the date of this order.

4. The parties plaintiff and defendant are hereby each awarded the personal property and possessions as a result of the marriage which are now in each of their possession.

5. That Robert L. Levison, Jr. shall pay to the defendant's attorney, JOHN R. CALHOUN, the sum of $5,000.00 as attorney's fees for representing defendant herein.

6. That Robert L. Levison, Jr. shall pay to Lauretta Ann Levison her reasonable expenses of litigation in the sum of $190.00 and court costs.

7. Plaintiff and defendant are ordered to comply with each and every provision of this decree. Failure by either party to do so shall subject him or her to contempt of this Court.

SO ORDERED IN OPEN COURT this 15th day of December, 1980.
Nunc Pro Tunc - December 10, 1980.

Judge Eugene Gadsden

STATE OF GEORGIA ¶ IN THE SUPERIOR
COUNTY OF CHATHAM ¶ COURT OF SAID
COUNTY

ROBERT L. LEVISON, JR., ¶
Plaintiff, ¶
-v- ¶ Civil
LAURETTA ANN LEVISON, ¶ Action No.
Defendant ¶ D-39667

ORDER

Plaintiff's petition for contempt having come on for hearing and after considering evidence presented by Plaintiff and Defendant,

IT IS HEREBY determined by the Court that defendant is in arrears in the sum of $15,000.00 lump sum alimony, $4,200.00 as periodic alimony and $5,000.00 as attorneys fees. It is further determined that there is no justifiable reason for defendnt's failure to pay these sums, and he is therefore in willful contempt of Court.

IT IS THEREFORE ORDERED that Defendant is in contempt of the judgment and order of this Court and is ordered confined to the Chatham County jail on July 17, 1981. Defendant may purge himself of contempt by paying $15,000.00 to Plaintiff and $5,000.00 to Calhoun & Associaes, P.C., by July 17, 1981, and by paying the present arrearage of $4,200.00 in installments of $50.00 bi-monthly to coordinate with the regular bi-monthly payments of $350.00 on the first and fifteenth of each

month until paid in full. Defendant is further ordered to pay Calhoun & Associates, P.C., the sum of $300.00 for bringing this contempt petition, said sum to be paid in three monthly payments of $100.00 beginning August 1, 1981. Defendant shall also pay all court costs of this contempt petition.

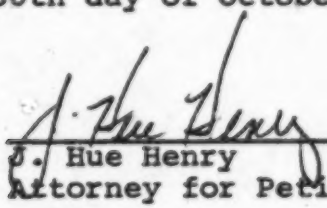
SO ORDERED this 9th day of July, 1981.

E. H. Gadsden,
JUDGE SUPERIOR
COURT, EASTERN
JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

I certify that I have this date served the Respondent with the foregoing Petition for Certiorari by placing three printed copies thereof in the United States mail with proper first class postage affixed thereto and addressed to her attorney, John Calhoun, Calhoun & Associates, P.C., 302 E. Oglethorpe Avenue, Savannah, Georgia 31401.

This 30th day of October, 1981.



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Attorney for Petitioner

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404/546-1393

Opposition

Office - Supreme Court.
FILED
NOV 30 1981
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No. 81-822

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ROBERT L. LEVISON

Petitioner,

v.

LAURETTA ANN LEVISON

Respondent.

BRIEF OF RESPONDENT IN RESPONSE TO PETITIONER'S "PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT"

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I.

QUESTION PRESENTED FOR REVIEW

Respondent takes issue with Petitioner's characterization of the Question presented for Review as (1) the verdict of the jury awarded alimony and the verdict was made the judgment of the court and as (2) judicial pleadings have been filed by Petitioner in the state courts of Georgia subsequent to the judgment complained of herein in which Petitioner judicially admits that the monies owing are periodic payments of alimony, and nowhere therein does he contend that the payments complained of constitute an equitable division of military retirement pay. In addition, Petitioner argued extensively at the hearing on the petition for contempt that the monies were no longer owing as (1) Respondent had entered into a meretricious relationship terminating alimony and as (2) Respondent had entered into a common-law marriage so that alimony was no longer owing.

Respondent also takes issue with the purpose of Petitioner's Petition. Petitioner has sought "A Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit". In the first place this action originated in the State of Georgia and the only federal appeal court here is the United States Court of Appeals

for the Eleventh Circuit. More important though is the fact that the decision complained of is that of the Supreme Court of the State of Georgia. Certiorari, if appropriate should go to that Court and not the Fifth Circuit.

The correct question should be:

> Was an award of periodic alimony in the amount of $700.00 per month in effect an equitable division of military retirement pay, even though (1) Petitioner subsequent to the complained of divorce judgment has filed judicial pleadings seeking to modify the same on the grounds that Respondent allegedly has engaged in a meretricious relationship so that under the applicable Georgia law the periodic payment of permanent alimony should be deleted, (2) In the divorce judgment, payments to Respondent terminate on her remarriage, (3) Petitioner argued extensively at the contempt hearing itself that the complained of sums were alimony, (4) The trial judge in the divorce trial repeatedly instructed the jury that the only issue was alimony.

II.

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IV.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Georgia Code §30-220(b)

> Subsequent to a final judgment of divorce awarding periodic payment of alimony for the support of a spouse, the voluntary cohabitation of such former spouse with a third party in a meretricious relationship shall also be grounds to modify provisions made for periodic payments of permanent alimony for the support of such former spouse. As used herein, the word cohabitation shall mean dwelling together continuously and openly in a meretricious relationship with a person of the opposite sex. In the event the petitioner does not prevail in the petition for modification on the ground as set forth herein, petitioner shall be liable for reasonable attorney's fees incurred by the respondent for the defense of the said action.

V.

STATEMENT OF THE CASE

Petitioner states in his opening paragraph:

"This case arises from a contempt proceeding brought to enforce a state court judgment providing for an equitable division of military retirement pay."

Respondent objects to this as the judgment below accorded no equitable relief to Respondent. That judgment awarded alimony in the lump sum of $15,000.00 and then awarded periodic payments of alimony of $700.00 per month until Respondent's death or remarriage. The trial judge repeatedly instructed the jury that the only issue was alimony. (Volume 1, pp 350-370)

Petitioner states that the judgment below provided an equitable division of military retirement pay. Petitioner though neglects to advise this court that he has, since the date the divorce judgment was entered and subsequent to this court's decision in McCarty v. McCarty, filed two judicial pleadings in which he plainly states that the complained of payments constitute periodic alimony. In addition, Petitioner argued extensively at the hearing on the petition for contempt that Petitioner's alimony obligation to Respondent had terminated either due to her alleged meretricious relationship or her alleged common-law marriage. Finally, as noted above, the trial judge instructed the jury that the only issue was one of alimony. Absolutely no instruction concerning

any equitable division of Petitioner's personal property in general or military retirement pay in particular was given. (Vol. 1, pp. 350-370)

Georgia law in Code Section 30-220(b) provides that periodic payments of permanent alimony may be modified if the former spouse receiving same voluntarily cohabits in a meretricious relationship with a third party. On July 2, 1981, Petitioner in the Superior Court of Clarke County, Georgia filed a Petition to Modify Final Decree claiming such a voluntary cohabitation in a meretricious relationship and praying "That said judgment be modified so as to delete plaintiff's obligation to pay alimony." (See Appendix) In addition, Petitioner filed a Motion to Stay a garnishment proceeding on the ground that he had earlier filed the petition to modify the final decree which seeks a "declaration of the extent, if any, of defendant's alimony obligations to plaintiff." (See Appendix)

Respondent respectfully submits that, to say the least, the conduct of Petitioner has been duplicitous in filing pleadings in Georgia judicially admitting that the periodic payments are indeed alimony when that was to Petitioner's advantage and in filing a Petition for a Writ of Certiorari in the Supreme Court of the United States solemnly contending that the award was an equitable division of military

retirement pay when Petitioner saw advantage in that. Respondent further respectfully submits that it would be the utmost error to grant Certiorari and thereby condone the hypocritical and insincere conduct of the Petitioner.

Petitioner also is less than candid when recounting the trial court's instructions and responses to the foreman's inquiries. Initially, it should be noted that the jury was never instructed by the trial court as to any right of the Respondent to an equitable division of Petitioner's property. Further, as to the inquiry by the foreman of the jury and Petitioner's reliance on that to support his argument, Respondent submits that such inquiries are not relevant to the issue raised and it would be extremely dangerous to grant Certiorari based, not on the judgment and verdict, but on a juror's inquiry. Even if considered though, it clearly demonstrates that the jury was awarding alimony due to the foreman's statement and the resultant verdict as the verdict itself stops payments on Respondent's remarriage.

Petitioner next submits that the inquiry by Respondent's counsel as to the percentage of increase on periodic alimony with the increase in permanent retirement benefits demonstrates an equitable division. Petitioner overlooks though that the jury was doing nothing more than protecting Respondent from the ravages of

inflation, recognizing that as Petitioner's income increased so would Respondent's needs.

VI.

REASONS FOR DENYING THE WRIT

First and foremost the Petition for a Writ should be denied due to the duplicitous conduct of Petitioner in representing to the state court in order to take advantage of state law that the payments are periodic payments of alimony and in representing to this Court that the payments are an equitable division of military retirement pay in order to take advantage of the recent decision in McCarty v. McCarty.

The payments awarded most certainly are not an equitable division of military retirement pay as (1) the verdict awards alimony (2) the payments terminate according to the verdict on Respondent's remarriage and according to the judgment on Respondent's death or remarriage (3) Respondent was not given lifelong absolute ownership (4) Respondent was not awarded the military retirement pay or any particular portion thereof, but merely a monthly alimony payment of $700.00, (5) Petitioner can meet the alimony obligation out of any source he chooses. In the event though he chooses not to meet it, then Respondent is left to her available

collection remedies, (6) as noted above, Petitioner has filed judicial pleadings, acting as admissions in judicio, that the payments are periodic alimony and Petitioner argued extensively at the contempt hearing that the payments constitute alimony, (7) the jury was never instructed on the issue of equitable division of Petitioner's property in general or the military retirement pay in particular (8) the trial judge instructed the jury that the only issue was one of alimony.

Petitioner's argument seems to be that since his income at the time of the divorce judgment was primarily military retirement pay, that any award to Respondent constitutes an equitable division of that pay. This is illogical. If one spouse is entitled to alimony for her support, then simply because the main source of income is military retirement pay, that does not substantively create an equitable division, especially when the award terminates on remarriage, when the judgment merely provides a sum certain rather than a proration of the retirement pay and when the jury was not instructed on any issue of equitable division of personal property.

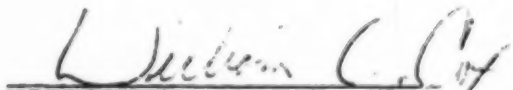
Certiorari should also not be granted as, under Rule 17.1(b) of the United States Supreme Court, there has been no decision by a state court of last resort resolving "a federal question in a way in conflict with

the decision of another state court of last resort, or of a federal court of appeals." Petitioner has simply been held in contempt of court for failure to pay alimony as required by the judgment. Such wilful misconduct by the Petitioner should not be further sanctioned by a grant of Certiorari.

Respondent respectfully submits that there was not in the instant case, as a substantive matter, an equitable division of military retirement pay, and would not under Georgia law be construed as an equitable division. Rather, there has been an award of alimony, both lump sum and periodic. The lump sum obviously comes from the monies accumulated during the course of the marriage of a little in excess of $30,000.00. (Vol. 1. p. 31) The periodic obviously based on Respondent's needs. Petitioner has been held in contempt of court for failure to comply with the terms of that judgment.

Certiorari should not be granted in the instant case. Justice simply would not be served. Respondent was awarded periodic payments of alimony. Petitioner has filed other judicial pleadings, amounting to admissions in in judicio that the payments are indeed alimony. Petitioner has argued in the instant contempt action that the payments are alimony and have been terminated due to an alleged meretricious relationship or common-law marriage. The trial judge in the

divorce action instructed the jury that the only issue was alimony. No instruction was ever given that Respondent could receive either an equitable division of the property of Petitioner in general or the military retirement pay in particular. Respondent therefore requests that the petition for a writ be denied.



WILLIAM O. COX

JOHN R. CALHOUN

KRAN RIDDLE

VII.

APPENDIX

STATE OF GEORGIA COUNTY OF CHATHAM	]]	IN THE SUPERIOR COURT OF SAID COUNTY
LAURETTA ANN LEVISON Plaintiff v. ROBERT L. LEVISON Defendant v. U.S. AIR FORCE ACCOUNTING CENTER, DENVER, COLORADO Garnishee	]]]]]]]]]	CIVIL ACTION NO. 16879-O

MOTION TO STAY

NOW COMES Defendant, Robert L. Levison, by and through counsel, and respectfully moves the Court for an order temporarily staying this action until such time as Civil Action No. 36,435 in the Superior Court of Clarke County, and Civil Action No. 45485 in the Superior Court of Chatham County are resolved. In support hereof, defendant shows the following:

1.

There is currently pending in the Superior Court of Clarke County, Georgia, a petition to modify the

final divorce decree (Exhibit A hereto). Said civil action seeks a declaration of the extent, if any, of defendant's alimony obligations to plaintiff.

2.

There is currently pending in the Supreme Court of Georgia under a stay of remittitur, a contempt action against defendant (pleadings attached hereto Exhibit B). Said civil action is currently stayed pending the filing of a petition for certiorari in the United States Supreme Court. Said civil action seeks a declaration of the extent if any, of defendant's alimony obligations to plaintiff.

3.

The outcome of the aforesaid civil actions may materially affect this proceeding in that defendant's alimony obligations may have terminated prior to the date that any installment became due.

WHEREFORE, defendant prays that a stay of these proceedings be entered pending resolution of the aforesaid civil actions for the reasons explained in the brief attached hereto in support of this motion.

Respectfully submitted,
HENRY & MARSHALL
Attorneys for Defendant

BY: _____
J. HUE HENRY

STATE OF GEORGIA COUNTY OF CLARKE	]]	IN THE SUPERIOR COURT OF SAID COUNTY
ROBERT L. LEVISON Plaintiff v. LAURETTA ANN LEVISON Defendant	]]]]]	CIVIL ACTION NO. 36435-B

PETITION TO MODIFY FINAL DECREE

1.

Plaintiff submits himself to the jurisdiction of this Court.

2.

Defendant is a resident of Clarke County, Georgia, and is subject to the jurisdiction of this Court. She may be served with service of process at her residence, which is located at 872 College Avenue, Athens, Georgia.

3.

A final judgment granting alimony and property to defendant was entered in the Superior Court of Chatham County, Georgia, on December 15, 1980. A copy thereof is attached hereto as Exhibit "A".

4.

Subsequent to said final judgment, defendant has voluntarily cohabited with a third party of the opposite sex

in a meretricious relationship.

WHEREFORE, plaintiff prays:

(a) That process issue and the defendant be required to answer this complaint;

(b) That said final judgment be modified so as to delete plaintiff's obligation to pay alimony, said order to be applied retroactively from the commencement of defendant's cohabitation with a third party in a meretricious relationship;

(c) That plaintiff have such other and further relief as the Court may deem to be just and equitable.

Respectfully submitted,

HENRY & MARSHALL
Attorneys for Plaintiff

BY: _____
J. HUE HENRY

CERTIFICATE OF SERVICE

I certify that I have this date served the Petitioner with the foregoing Brief of Respondent by placing three printed copies thereof in the United States mail with proper first class postage affixed thereto and addressed to his attorney, J. HUE HENRY, Henry & Marshall, P. O. Box 808, Athens, Georgia 30603.

This 30th day of November, 1981.

CALHOUN & ASSOCIATES, P.C.

BY: William O. Cox
WILLIAM O. COX

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